

SPECIAL CIVIL APPLICATION NO. 1669 OF 1984

Date of decision: 10-6-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J  
(10-7-1996)

Mr. P. B. Majmudar for the petitioner.  
None present for the respondents.

ORAL JUDGMENT:

The petitioner filed civil application No.4762 of 1985, which is also on board today, for bringing on record the heirs and legal representatives of respondent No.1 who expired on 22nd August, 1984. In the civil application rule was issued to the proposed heirs returnable on 31st December, 1985. Notice of rule issued in the said civil application has not been served so far, and the petitioner has not taken any steps to serve the notice of rule upon the heirs and legal representatives of respondent No.1. For this lapse the civil application has already been dismissed. Though the special civil application was required to be dismissed for the reason that the heirs and legal representatives of the deceased respondent have not been brought on record, I have gone through the merits of the case also.

2. Challenge is made by the petitioner in this special civil application to the order of the Gujarat Revenue Tribunal dated 4th October, 1983 by which the Tribunal has remanded the matter to the Mamlatdar. The facts of the case are to be stated briefly to appreciate the controversy which has been raised in this special civil application. The petitioners filed application before the Mamlatdar and A.L.T. for a declaration that they were tenants of the land. The declaration has been prayed for on the ground that they were cultivating the land for last more than 40 years. The Mamlatdar & A.L.T., by his order dated 29-12-1975 held the petitioners to be the tenant of agricultural land except the land bearing Survey No.150/3 of village Subhalav. Against this order of the Mamlatdar & A.L.T. respondent No.1 and respondent No.2 filed two separate appeals. Both the appeals were dismissed by the Deputy Collector by judgment dated 24-12-1979. The matter was taken by the respondents in revision before the Gujarat Revenue Tribunal, Ahmedabad. The revision application of respondent No.2 has been dismissed on the ground that he had no locus standi, whereas the revision application filed by respondent No.1 has been accepted and the matter has been ordered to be remanded to the Mamlatdar for the reason that the Mamlatdar had not passed order on the application filed by respondent No.1 by giving him opportunity to produce evidence and secondly to allow him to engage another counsel. Counsel for the petitioner contended that while deciding the revision application the Tribunal has ordered that the respondents should be allowed to produce evidence. I do not find that such an order passed by the Tribunal. The order of the Tribunal gives out that the matter has been remanded back to the Mamlatdar & A.L.T. to consider the application of the respondents for allowing them to produce

evidence and for allowing them to engage counsel. This matter is still open before the Mamlatdar for hearing of the parties. The order of remand will not cause any prejudice to the parties and it is also not the final adjudication in respect of the matter. No illegality whatsoever has been committed by the Tribunal in passing the impugned order which calls for interference by this Court sitting under Article 227 of the Constitution of India.

3. In the result this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier by this court is vacated. However, it is ordered that the Mamlatdar shall dispose of the matter within six months from the date of receipt of certified copy of this order.